

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6051 of 2007()

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[CRIME NO.395/2007 OF FORT KOCHI POLICE STATION]

: PETITIONER/3RD ACCUSED  
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VINU, AGED 24 YEARS, S/O.PAUL,  
CHETTIVELIKAKATHU, CC 9/967,  
PANIDIKUDY, KOCHI - 682 002.

BY ADV. SRI.ASHIK K.MOHAMMED ALI

RESPONDENTS: COMPLAINANT  
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STATE OF KERALA,  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
PALLURUTHY THROUGH THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**R.BASANT, J.**

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B.A.No.6051 of 2007  
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Dated this the 9<sup>th</sup> day of October 2007

**O R D E R**

Application for anticipatory bail. The petitioner is the third accused. Altogether there are four accused persons. The first accused alone is named in the F.I.R. It is alleged that three more accused persons were present along with the first accused. The alleged incident took place on 3/4/2007. Prior animosity is the alleged motive. Iron rods were allegedly used for the occurrence. Only accused 1 and 2 had allegedly wielded the iron rods. The other two accused, allegedly shared the common intention and attacked without using any weapons. The petitioner has subsequently been arrayed as an accused. Investigation is in progress. The petitioner apprehends imminent arrest. The allegation are raised subsequently under Sections 326 and 308 I.P.C.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. The petitioner was not present. At any rate, no valid allegation under Section 308 can be raised considering the nature of the incident and the alleged

injury suffered. Section 326 I.P.C has been included only because the victim has lost one tooth.

3. The learned Public Prosecutor opposes the application. Called upon to explain why Section 308 I.P.C. has been included, the learned Public Prosecutor submits that the use of iron rods and loss of one tooth have prompted the investigating officer to include the allegation under Section 308 I.P.C.

4. I have considered all the relevant inputs. While I do not agree with the learned counsel for the petitioner that this is a fit case to invoke the extraordinary equitable discretion under Section 438 Cr.P.C, I am certainly in agreement with the learned counsel for the petitioner that prima facie no sufficient reasons to justify the inclusion of the allegation under Section 308 I.P.C. are shown to exist now. I am satisfied, in these circumstances, that appropriate directions in that regard can be issued.

5. In the result, this bail application is dismissed but with the specific observation that the petitioner can surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail. If the petitioner

surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously. While considering such application for regular bail, the learned Magistrate shall ignore the allegation under Section 308 I.P.C and dispose of the bail application as if no allegation has been raised under Section 308 I.P.C.

**(R.BASANT, JUDGE)**

jsr

// True Copy//

PA to Judge





**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007